IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.MC.No. 3863 of 2006()

CC.256/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

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PETITIONER: ACCUSED NOS.1,2,3 & 6

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1. DAVID SYLUM, S/O. MANI SYLUM,
   MOOLATHARA HOUSE, IYTHALA ROAD,
   PAZHAVANGADI, RANNI.

2. S.VENUGOPALAN, S/O. M.SANKARA PILLAI,
   PERINGOTTUVILA VEEDU, KUDAPPANAKUNNU P.O.,
   THIRUVANANTHAPURAM.

3. K.S.SARANATH, S/O. A.KRISHNAN NAIR,
   KRISHNA VILAS, T.C.17/2081, DR. PAI ROAD,
   POOJAPPURA, THIRUVANANTHAPURAM.

4. R.JAYAKUMAR, S/O. RAJAPPAN NAIR,
   MELATHIL VEEDU, PANGAPPARA, THIRUVANANTHAPURAM.

BY ADV. SRI.P.RAMAKRISHNAN NAIR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT OF KERALA, ERNAKULAM.
(DETECTIVE INSPECTOR, CRIME BRANCH CID, KOLLAM.)

BY P.P. SRI.K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3863 OF 2006

Dated this the 4th day of December, 2006

ORDER

The grievance of the petitioners is that their personal presence was unnecessarily insisted by the learned Magistrate who dismissed their applications for excusing their absence filed through counsel. Non-bailable warrants of arrest were issued against them. To verify facts, a report of the learned Magistrate was called for. The learned Magistrate has submitted a detailed report along with a copy of the order sheet which clearly show that the case was not posted formally and was posted specifically for framing charges. On previous occasions also the case was posted for framing charges. But charges could not be framed on account of the absence of the petitioners/accused. It is, in these circumstances, that the patience of the learned Magistrate came to an end and non-bailable warrants of arrest were issued against the petitioners on 30/9/2006. I am satisfied that the learned Magistrate has not committed any indiscretion in issuing non-bailable warrants of arrest against

the petitioners.

2. It is for the petitioners now to appear before the learned Magistrate and satisfy the learned Magistrate that there was no wilful disobedience or laches on their part in not appearing before the learned Magistrate on 30/9/2006. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

3. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-
(R. BASANT, JUDGE)

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//true copy// **P.S. To Judge**